IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 146 of 1979

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

FOOD CORPN. OF INDIA

Versus

SOLI SHAHPURJI MEHTA

Appearance:

1. First Appeal No. 146 of 1979

MR SB VAKIL for Petitioners

MR JV DESAI for Respondent No. 1

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 11/10/1999

ORAL JUDGEMENT

1. The appellant- Food Corporation of India has challenged the judgment and decree dated 28.9.1978 passed by the learned City Civil Judge, Ahmedabad, decreeing the suit of the respondent- plaintiff and directing the appellants to pay a sum of Rs. 16,605.45 with interest at the rate of 6% p.a. from the date of the suit. The

respondent is a handling and transport contractor while the appellant no.1 is a Food Corporation of India of which the appellants no. 2 and 3 are the officers. The respondent was appointed as a handling and transport contractor by the Surat Depot of the 1st appellant vide written contract at Ex. 45. The respondent, as a handling and transport contractor, was required to render various and different services to the 1st appellant as was directed by its officers, the appellants no. 2 and 3 or their nominees or subordinates. It is not in dispute that each item of service that the respondent was to render was to be paid for separately at the rate envisaged by the contract. The suit contract contains schedule 19 of rates and it appears that while inviting tenders for giving contract for handling and transporting food-grains, the tenderers were to give their quotations or rates either above or below the scheduled rates and it is not in dispute that the respondent's tender being the lowest tender in rate which was 67% above the schedule rate, was accepted and that finally gave rise to the suit contract. In substance, the respondent was to be paid for on the basis of 67% above the rates, shown in the schedule for the various items or services rendered by him to the first appellant. It is the case of the respondent- plaintiff that though the contract provides for different categories and items of services and though the schedule of rates appended to the contract provides for the rates at which he is to be paid by the appellants, the envisaged unforeseen circumstances and unforeseen items of services which he might be required to render and, therefore, a clause in the contract provided that if the contractor was required to perform any services, in addition to those specifically provided for in the contract and in the schedule appended to the contract, the contractor's remuneration for such services was to be paid at the rate negotiated and fixed by mutual agreement. According to the respondent, sometime in 1973, the food crisis developed and as a result, the normal course of handling and transporting food-grains of the 1st appellant was required to be accelerated and the respondent was required to render certain services which were never in contemplation at the time when the contract was made and about which the contract is silent. It is the respondent's say that in the normal course, handling and transporting bags of food-grains which were received in wagons at Surat Railway Station were to be unloaded from the wagons, to stack them at the platform, to load them in the trucks and to take them in the loaded trucks to the depot or godowns of the 1st appellant at Surat whenever needed, under the instructions of the officers of the 1st appellant, again to reverse the same course,

namely to take back the bags from the godowns or the depot in the trucks to the outgoing railway yard, to unload the trucks and to load the food-grains bags into the outgoing wagons. According to the respondentplaintiff, this was the normal course of service that he had to render to the 1st appellant and each of these services have been separately mentioned in the schedule. However, due to the crisis above mentioned, instead of taking food-grains bags from the railway platform to the depots or godowns, they were required to be straightaway loaded into outgoing wagons after truck loads of food grain bags were weighed at a weigh bridge outside the railway yard. According to the respondent, the demand for food-grains by the State Government had increased abnormally with the result that the 1st appellant Corporation had to cope up with the demand at an accelerated speed and the respondent was directed to lift the food-grains bags from the platform of inward yard, to load them in the trucks, to take those trucks at a weigh bridge, to have the truck loads weighed at the weigh bridge and thereafter to take those trucks to outgoing railway yard, unload those trucks and load the wagons lying in the outgoing yard. It is the case of the respondent that getting the truck load of food-grains weighed at the private weigh bridge was not a simple affair. At the private weigh bridge, even other trucks were being weighed and many a times, the respondent's trucks had to take their turn, stand in a queue for getting the contents thereof weighed and this consumed abnormally long time. According to the respondent, this was never contemplated or provided for in the contract or by the schedule annexed thereto, but as a dutiful contractor, the respondent- plaintiff, no sooner he was directed to render the extra services, without waiting for getting the remuneration fixed, started rendering these extra services in a hope that the officers of the 1st appellant would not be unreasonable with regard to his remuneration for the extra services which were never contemplated in the contract and which he had rendered sincerely. It is the further case of the respondentplaintiff that the 2nd appellant, the District Manager of the 1st appellant at Baroda, recommended the Regional Manager, the 3rd appellant at Ahmedabad that the respondent contractor should be paid for these extra services at the same rate as he was being paid for regular services envisaged by clause 2 of part I of the contract. The respondent in fact took up the matter with the appellant no.3 at Ahmedabad, but the appellant no.3 Regional Manager turned down his request to pay him at scheduled rates, treating those extra service on the same basis as if they were services contemplated by item (2)

of Part I of the contract and instead, the appellant no.3 sanctioned or approved the rates for these extra services on kilometer basis under item 7 of Part I of the contract.

2. It is this difference between the respondent on one hand and the appellants, more particularly appellant no.3 on the other hand, which has given rise to the suit claim. According to the respondent, he is entitled to get payment for the extra services at the rate agreed for the services contemplated by item 2 of Part I of the contract. In substance, according to the respondent, the contract provides for separate payment for physical verification for weighment, while according to the appellants, the services to be rendered by the respondent for weighment are included in the services for physical verification and the respondent has not to be separately paid for the weighment and further more, if the respondent is not asked to weigh a certain number of bags, then, the charges for weighment of those bags of food-grains may be payable to him for physical verification. It is because of these two different stands, one taken by the respondent and the other taken by the appellant that the claim under two minor heads of Rs. 579/- and Rs. 108.25 has crept in. It appears that the respondent had earlier billed the appellants for certain services and he was paid the amount of those bills. Subsequently, the appellants contended that in those earlier payments, the respondent was overpaid under the head of physical verification and on that count, from the respondent's subsequent bill, a sum of Rs. 579/- was deducted. The respondent, therefore, contended that the said deduction was illegal. Similarly, from another bill, a sum of Rs. 108.25 was deducted and the respondent, on the same line, contended that the said deduction was illegal. The respondent, in the circumstances, claimed Rs. 16,605.45 from the appellants.

3. The appellants, in their written statement at Ex. 50, while denying various averments made in the plaint, have also raised the question regarding the jurisdiction of the court to hear and try the suit as according to the appellants, the appellant no.3 is having exclusive jurisdiction and his decision on the controversy between the parties was to be final. According to the appellants, there has been arbitration clause between the parties and the decision of the arbitrators was to be taken as final and since the respondent has not chosen to go for arbitration, the civil court has no jurisdiction. It was further contended that the respondent has a right

to represent in writing before the appellant no.3 to have a decision on the question as to whether the services he now calls to be extra services were or were not covered by the contract and that such reference was to be made within 15 days from the actual rendering of service and as the respondent has not done so and has not represented his case within 15 days, the suit is time barred.

4. The learned trial Judge, after appreciating the evidence on record and interpreting the relevant clause, at the end of the trial, on merits of the case, decided that the respondent had proved that the work done or services he had rendered were beyond what was envisaged or contemplated by the contract and, therefore, the plaintiff is entitled to recover either under the contract or as service had and received by the appellants and not intended to be rendered by the respondent gratuitously and, therefore, decreed the suit in favour of the respondent- plaintiff.

5. Having heard the learned Counsel appearing for the parties, the only question required to be decided in this appeal is as to which clause be applied for fixing the remuneration. According to the learned Counsel appearing for the appellants, the respondent has been rightly paid under item 7 of Part I of the contract while it is the contention of the learned Counsel appearing for the respondent that he should have been paid for under item 2 of Part I of the suit contract Ex. 45. The relevant item no.2 in Part I deals with the transport of food-grains from railway station and various godowns and vice versa. It reads as under:-

"The contractors shall transport by trucks to be arranged by them such number of bags of food-grains, sweepings, spillings etc. as may be required from day-to-day by the Regional Manager or an officer acting on his behalf from the railway station to the various godowns or vice versa. The contractors shall take care not to mix bags or different kinds of food-grains containing different qualities of the same food-grains and bags containing wet/ damaged grains, sweepings, etc., with bags of sound grains etc. The contractors shall obtain from the Regional Manager or an officer acting on his behalf, every evening particulars of the number of bags of food-grains etc., required to be transported the next day, the place, where the trucks/ carts should report for loading and the destinations to which the goods would be required

to be transported. In special cases, they may be required to arrange transport at shorter notice and they shall be bound to comply with such requisitions. Payment for this service will be in accordance with the stipulation given in notes below the schedule of rates. "

Item No. 7 of Part I on which the appellants rely reads as under:-

"Transport of Food-grains (not provided for under item 2 & 6)

The contractors shall transport by trucks to be arranged by them, such quantity of food-grains as may be required from day-to-day by the Regional Manager or an officer acting on his behalf, from one godowns to another godowns or from any place to another place in and around Surat. The contractors shall take care not to mix bags of different kind of food-grains and bags containing wet/ damaged food-grains, sweepings, etc. with bags of sound grains, etc. The contractors shall obtain from Regional Manager, or an officer acting on his behalf, every of bags of food-grains etc. required to be transported the next day, the place where the trucks should repost for loading and the destinations to which the goods would be required to be transported. In special cases, the contractors may be required to arrange transport at shorter notice, and they shall be bound to comply with such requisitions. Payment for this services will be in accordance with the stipulation given in notes below the schedule of rate. "

Reading both the clauses and comparing each other, it is clear that both the clauses state transport of food-grain bags from railway station to various godowns. On minute reading of these two clauses, it appears that item no.2 of Part I deals with the transport of food-grains and vice versa only while item no. 7 of Part I not only deals with transport of food-grains from one godowns to another, but it also includes transport of food-grains from any place to another place in and around Surat over and above the transportation of food-grains from one godowns to another. In view of the fact that item no. 7 of Part I deals with the item which is not provided under items no. 2 and 6, it is clear that the contract is not only to transport the food-grains from one godowns to another, but he is also required to

transport the food-grains from any place to another place in and around the City of Surat. It is not disputed in the instant case that the food-grains were not transported from railway station to various godowns and vice versa. The food- grains in the instant case were transported from railway yard to the weigh bridge and back to the railway yard in the city of Surat. Thus, when the food-grains have not been transported from railway station to the godowns and vice versa, I fail to see as to how item no.2 of part I is applicable in the instant case. In my opinion, the transportation from inward yard to outward yard would be a transportation from one place to another and that too as per the requirement of item no.7. Though the learned trial judge, in my opinion, has observed that certainly, transportation from inward yard to outward yard would be transportation from one place to another, but the learned trial judge has committed an error by observing that if such a transportation includes weighment to be made at a private weigh bridge, the operation cannot be said to be transportation simpliciter of food-grains from one place to another and, therefore, item no.7 can have no application. With respect to the learned trial judge, the said finding is not proper as he has given undue importance to weighment at the private weigh bridge. The question in the instant case is whether the food-grains have been transported from one place to another or not. As observed earlier, the food-grains have been transported from one place to another; may be from inward yard to the outward yard and even if there is hardly any distance between the two, and that the food-grains have been weighed at the weigh bridge in between, the said facts are totally irrelevant. As provided in the contract, the contractor shall be made payment for the services he shall render. Therefore, he has no say in the matter about the distance for transportation and/ or about the so-called difficulties in loading, unloading and weighing the food-grains at the weigh bridge. In any case, once it is held that the food-grains have not been transported from railway station to various godowns, item no.2 of Part I will have no application in the instant case and, therefore, the claim made by the respondentplaintiff on that count is without any substance. In that view of the matter, the finding recorded by the learned trial judge that the respondent has established his case on the ground that his case falls under item no.2 of Part I is clearly illegal and a misreading of the relevant clause. It is not in dispute that the respondent- plaintiff has been paid Rs. 10,029.25 on the basis that his case falls under item no. 7 of Part I of the suit contract and since the

respondent- plaintiff has claimed Rs.25,946.95 on the ground that his case falls under item no.2 of Part I of the contract, a decree has been passed for Rs. 16,605.44 being the difference of amount together with Rs. 579/- and Rs. 108.25 being the amount, according to the respondent, illegally deducted by the appellants. This Court, while admitting the appeal, in the Civil Application preferred by the appellants for stay of the execution of the judgment and decree, directed the appellants to deposit the decretal amount in the trial court and the respondent was permitted to withdraw the said amount on furnishing the security to the satisfaction of the trial court. It is needless to say that the appellants shall be entitled to recover the amount withdrawn by the respondent.

6. In the result, this appeal is allowed. The judgment and decree passed by the learned City Civil Judge, Ahmedabad, granting a decree in the sum of Rs. 16,605.45 in favour of the respondent- plaintiff together with interest at the rate of 6% p.m. is set aside. Considering the facts and circumstances of the case, no order asto costs.

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